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FM AMEMBASSY COLOMBO
TO RUEHC/SECSTATE WASHDC 8178
INFO RUEHKA/AMEMBASSY DHAKA 0915
RUEHIL/AMEMBASSY ISLAMABAD 7904
RUEHKT/AMEMBASSY KATHMANDU 6081
RUEHNE/AMEMBASSY NEW DELHI 2063
RUEHKP/AMCONSUL KARACHI 2355
RUEHCG/AMCONSUL CHENNAI 8517
RUEHBI/AMCONSUL MUMBAI 5962
RUCPDOG/USDOC WASHDC
RUEHLMC/MILLENNIUM CHALLENGE CORP WASHINGTON DC

UNCLAS SECTION 01 OF 02 COLOMBO 000509

SENSITIVE

SIPDIS

STATE FOR SCA/INS AND EEB/CBA
STATE PLEASE PASS TO USTR FOR V KADER
COMMERCE FOR JONATHAN STONE AND EROL YESIN
TREASURY FOR LESLIE HULL

E.O 12958: N/A

TAGS: [ECON](#) [EINV](#) [PGOV](#) [PREL](#) [CE](#)

SUBJECT: SRI LANKA: EMBASSY MAKES HEADWAY ON LETTERS OF CREDIT FOR
U.S. INVESTOR AES

REF: A. 2007 COLOMBO 1002 B. 2007 COLOMBO 622 C. 2007 COLOMBO 848

11. (SBU) Summary: Following Ambassador's intervention with senior presidential advisor Basil Rajapaksa, the Government of Sri Lanka has acted to resolve its longstanding failure to provide standby letters of credit to U.S. investor AES. AES operates a \$104 million 163 megawatt power plant in Colombo, but has never received contractually-required letters of credit for about \$14 million to guarantee against non-payment by the state-owned Ceylon Electricity Board. Rajapaksa's involvement led to a GSL decision to provide a Treasury counter-guarantee to state-owned People's Bank, which is now to issue the letters of credit on behalf of its client the Ceylon Electricity Board. Although no one in the GSL has ever contested the obligation to provide the letters of credit, this is the first movement towards doing so since Post began advocacy over two years ago. AES predicts it will take a month or two before the Electricity Board and bank lawyers draft and finalize the letters of credit. In May 29 Trade and Investment Framework Agreement talks, the USG should welcome this progress, but emphasize the importance of actually delivering the letters of credit. End summary.

ELEVATING AES CASE TO PRESIDENT'S BROTHER
PRODUCES TENTATIVE RESOLUTION

12. (SBU) Ambassador called on Senior Advisor to the President Basil Rajapaksa May 7 to continue Embassy advocacy on behalf of U.S. independent power producer AES Kelanitissa (Private) Limited. AES has been operating a \$104 million 163 megawatt power plant in Sri Lanka since 2003, but has never received contractually-required standby letters of credit from the state-owned Ceylon Electricity Board (CEB). The letters of credit would protect AES against three months' (or about \$14 million) non-payment by the CEB. Without the letters of credit, AES's lenders have been unwilling to allow AES and its co-investors to take profits from the project.

13. (SBU) Ambassador told Rajapaksa that 21 months of advocacy with the concerned ministries had not yet produced any progress in what Post considers the top priority investment problem to resolve (reftels). Rajapaksa reported he had received the Ambassador's April letter about the matter and that he had asked for an explanation from state-owned People's Bank, which handles the CEB's finances. He passed the Ambassador a letter from People's Bank citing the CEB's negative balance sheet (it sells power for less than it pays to produce or purchase it, so is perennially in the

red) as explanation for why it could not issue the letters of credit. The letter recited People's Bank two-year position on the matter: it would only provide the letters of credit if it received a counter-guarantee from the Treasury to protect it against CEB bankruptcy. Rajapaksa promised the Ambassador he would raise the matter with Treasury Secretary P.B. Jayasundera.

14. (SBU) On May 16, Rajapaksa called the Ambassador to inform him that the Treasury had agreed to provide the counter-guarantee to People's Bank. He faxed the Ambassador a letter from People's Bank to CEB stating that the bank would proceed with issuing the letters of credit on the strength of the Treasury guarantee, and asking the CEB to provide it with legal details and the exact amounts the letters should guarantee.

AES PLEASED; EXPECTS ACTION WITHIN TWO MONTHS

15. (SBU) EconOff conveyed the People's Bank-to-CEB letter to AES Project Director Shahid Khan, who responded positively to the news, noting that a Treasury guarantee had long been the only likely way to break through People's Bank's unwillingness to issue the letters of credit for CEB. He was confident that the matter would now be resolved, but expected it to take one or two months for CEB to convey exact financial details to People's Bank and for the bank's lawyers to draft the letters of credit in accordance with the terms specified in AES's power purchase agreement with CEB.

COMMENT: THIS WILL REQUIRE FURTHER PRESSURE TO COMPLETE

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16. (SBU) Getting the letters of credit drafted involves probably just a couple of days' accounting and legal work, but Post agrees with Khan's assessment that it will take the lethargic CEB and People's Bank accountants and lawyers a month or more to do it. For this reason, we intend to continue tracking the matter closely until it is truly resolved. In light of the GSL having made the right decision but not yet having completed action on it, Post recommends that Washington agencies participating in May 29 Trade and Investment Framework Agreement (TIFA) talks welcome this progress, but likewise emphasize the importance of actually delivering the letters of credit.

17. (SBU) Post also notes that this is not the only contractual problem AES is trying to resolve with the CEB. As reported in our 2007 Investment Disputes and Expropriation Claims Report (ref C), AES also is owed \$3 million for power it produced under a 2004 contract separate from its original power purchase agreement following a plant fire. The CEB disputes this claim, saying the contract it signed with AES to purchase power at a higher than usual rate is invalid because it was done "under duress" (the then-government was facing an election and was eager to avoid power cuts). AES had made a strategic decision to pursue the letters of credit as a first step, both because it considered the matter easier to resolve and because it was more important to AES's investors that they begin seeing returns on their investments. Post will continue advocacy for AES on this outstanding payment when the letters of credit issue is fully resolved.

MOORE